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Aaron Waxler
Corporate Patent Counsel
Philips Electronics North America Corporation
P.O. Box 3001
Briarcliff Manor, NY 10510

In re Application of
CHIMOMBO
Serial No.: 10/565,817
PCT No.: PCT/IB04/02332
Int. Filing Date: 15 July 2004
Priority Date: 24 July 2003
Atty Docket No.: GB030119
For: WIRELESS NETWORK SECURITY

DECISION ON PETITION

UNDER 37 CFR 1.47(b)

This decision is in response to the petition under 37 CFR 1.47(b) filed 24 July 2006 to accept the application without the signature of inventor Christopher Z. Chimombo.

BACKGROUND

On 15 July 2004, applicant filed international application PCT/IB04/02332 which claimed priority to a prior application filed 24 July 2003. Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States expired at midnight on 24 January 2006.

On 24 January 2006, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1). An oath or declaration as required by 35 U.S.C. 371 (c)(4) was not filed.

On 12 May 2006, applicant was mailed a **NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371** (Form PCT/DO/EO/905) informing applicant of the need to provide an executed oath or declaration of the inventor, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the international application number and international filing date. In addition, applicant was notified of the need to provide a surcharge of \$130.00 for filing the oath or declaration later than the appropriate 20 or 30 months from the earliest priority date. (37 CFR 1.492(e)). Applicant was given two months to respond and advised that this time period could be extended with a proper petition and payment of fees.

On 24 July 2006, applicant responded with the present petition. As authorized, payment of the one-month extension of time fee has been charged to deposit account number 14-1270. The response is therefore considered timely filed.

DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by: (1) the requisite petition fee under 37 CFR 1.17(I); (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the non-signing inventor; (4) an oath or declaration executed by the 37 CFR 1.47(b) applicant on behalf of and as an agent for the non-signing inventor; (5) proof of proprietary interest in the application; and, (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damages. Applicant has satisfied items (1), (3), and (6).

Regarding item (2), applicant attempted to mail a complete set of the application papers to the inventor. These papers were returned as the inventor no longer lived at the last known address. As such, applicant is required to show that a diligent effort was made to locate the missing inventor. as stated in the Manual of Patent Examination Procedure (MPEP), Section 409.03(d) Proof of Unavailability or Refusal, "Copies of documentary evidence such as internet searches, certified mail return receipts, cover letters of instructions, telegrams, that support a finding that the nonsigning inventor could not be found or reached should be made part of the statement. The steps taken to locate the whereabouts of the nonsigning inventor should be included in the statement of facts." The statement of facts from Mr. Waxler does not satisfy this item. Mr. Waxler states that "Multiple attempts were made to call Mr. Chimombo at the last known phone number and messages were left. No return call was received from Mr. Chimombo." However, Mr. Waxler does not detail these inquires nor has applicant included any evidence of what efforts were made to obtain a current mail address or other contact information for Mr. Chimombo. For example, applicant should include the results of any internet or telephone directory searches which were performed in an effort to locate the non-signing inventor. In addition, applicant should include a statement from the individual who made these inquires.

As to item (4), the filed declaration is unsigned. Applicant needs to file a declaration executed by an authorized officer of the assignee, Koninklijke Philips Electronics, N.V. on behalf of the corporation and on behalf of the non-signing inventor. The declaration must detail the signing individual's title and right to execute the declaration on behalf of the corporation. As explained in the Manual of Patent Examining Procedure at § 409.03(b):

Where an application is executed by one other than the inventor, the declaration required by 37 CFR 1.63 must state the full name, residence, post office address, and citizenship of the nonsigning inventor. Also, the title or position of the person signing must be stated if signing on behalf of a corporation under 37 CFR 1.47(b).

(B) The 37 CFR 1.47(b) applicant must state his or her relationship to the inventor as required by 37 CFR 1.64.

Regarding item (5), applicant has not included a copy of the referenced assignment document in which Mr. Chimombo assigned his rights in the invention to Koninklijke Philips Electronics, N.V.

In light of the above, it is not possible to grant applicant's petition at this time.

CONCLUSION

For the reasons stated above, applicant's petition under 37 CFR 1.47(b) is **DISMISSED**, without prejudice.

Any reconsideration on the merits of this petition must be filed within **TWO (2)** **MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(b)." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be directed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Derek A. Putonen
Attorney Advisor
Office of PCT Legal Administration
Tel: 571-272-3294
Fax: 571-273-0459